



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

GREENBERG TRAURIG LLP  
2450 COLORADO AVENUE, SUITE 400E  
SANTA MONICA CA 90404

**COPY MAILED**

**JAN 09 2007**

**OFFICE OF PETITIONS**

In re Application of	:	
Green et al.	:	
Application No. 10/776,209	:	DECISION ON PETITION
Filed: February 12, 2004	:	TO MAKE SPECIAL UNDER
Attorney Docket No. PDI-40	:	37 CFR 1.102(d)
	:	

This is a decision on the petition under 37 CFR 1.102(d), filed August 17, 2006, to make the above-identified application special based on prospective manufacture as set forth in M.P.E.P. § 708.02, Section I and on (b) Infringement as set forth in M.P.E.P. § 708.02, Section II.

The petitions are **DISMISSED**.

A grantable petition to make an application special under 37 CFR 1.102(d) and MPEP § 708.02, Section I: Manufacture, must be accompanied by the required fee pursuant to 37 CFR 1.17(h) and a statement by the applicant, assignee, or attorney/agent registered to practice before the Office alleging:

(A) The possession by the prospective manufacturer of sufficient presently available capital (stating approximately the amount) and facilities (stating briefly the nature thereof) to manufacture the invention in quantity or that sufficient capital and facilities will be made available if a patent is granted;

If the prospective manufacturer is an individual, there must be a corroborating statement from some responsible party, as for example, an officer of a bank, showing that said individual has the required available capital to manufacture;

(B) That the prospective manufacturer will not manufacture, or will not increase present manufacture, unless certain that the patent will be granted;

(C) That the prospective manufacturer obligates himself, herself or itself, to manufacture the invention, in the United States or its possessions, in quantity

immediately upon the allowance of claims or issuance of a patent which will protect the investment of capital and facilities; and

(D) That the applicant or assignee has made or caused to be made a careful and thorough search of the prior art, or has a good knowledge of the pertinent prior art.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The instant petition fails to meet the requirements set forth above for special status based on prospective manufacture as set forth in M.P.E.P. § 708.02, Section I, because it lacks a statement that explicitly includes the language in item (B).

A grantable petition to make an application special under 37 CFR §1.102(d) and MPEP §708.02, Section II: Infringement, must be accompanied by the required fee pursuant to 37 CFR 1.17(h) and a statement by the applicant, assignee, or attorney/agent registered to practice before the office alleging:

(A) That there is an infringing device or product actually on the market or method in use;

(B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The instant petition fails to meet the requirements set forth above for special status under 37 CFR §1.102(d) and MPEP §708.02, Section II: Infringement, because it lacks a statement that conforms to items (B) and (C), as noted above.

This lack of meeting the requirements of 37 CFR 1.102(d) and MPEP § 708.02, Sections I and II, as set forth above, does not permit the applicant to enjoy the benefit of advanced examination.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:                   Mail Stop PETITION  
                                Commissioner for Patents  
                                P. O. Box 1450  
                                Alexandria, VA 22313-1450

By hand:                   U. S. Patent and Trademark Office

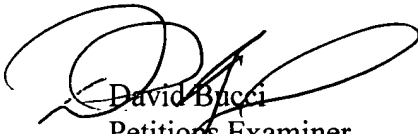
Customer Service Window, Mail Stop Petitions  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

By FAX: (571) 273-8300

Telephone inquiries concerning this decision should be directed to Ramesh Krishnamurthy at 571-272-4914, or to the undersigned at 571-272-7099.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 1623 for action in its regular turn.



David Bucci  
Petitions Examiner  
Office of Petitions